IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.74 OF 2005
ALONG WITH
CRIMINAL WRIT PETITION NO.75 OF 2005

Smt. Gurjeet Kaur Arora ...Petitioner.

V/s

Shri Vaibhav Kapoor & Anr. ...Respondents.

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Mr. Kafil Khan for the petitioner.

Mr. A.S. Shitole, APP for the State.

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CORAM: V.M. KANADE, J.
DATE : 24-02-2005

P.C.

1. Petitioner is original accused No.4 in Criminal Case filed by the complainant in the Court of Metropolitan Magistrate, 47th Court, Esplanade, Mumbai under section 138 read with section 141 of the Negotiable Instruments Act. Petitioner is challenging the issuance of process by the Metropolitan Magistrate.

2. The principal contention raised by the learned Counsel appearing on behalf of the Petitioner in both petitions which are filed under Article 226 of the Constitution of India and under section 482 of the Criminal Procedure Code is that the cheques were signed by respondent No.2 only and that the petitioner was not responsible for execution of any documents.

He further submitted that the only allegation made in the complaint was that the accused Nos. 2 to 4 are partners of accused No.1. It is further submitted that the statutory demand notice was issued by respondent No.1. However, a copy of the said notice was not served upon the petitioner and, therefore, she could not file reply. It is submitted that she has never participated in the day-to-day affairs of the firm and that she is only a sleeping partner of the firm. It is submitted that, therefore, she does not fall within the purview of section 141 of the Act since she is only a sleeping partner of the firm. In support of the said submission, the learned Counsel appearing on behalf of the petitioner has relied upon the judgment of the Supreme Court in the case of **Monaben Ketanbhai Shah & Anr. Vs. State of Gujarat & Ors.** reported in **2004(2) Bom.C.R.(Cri.) 512**.

3. I am unable to accept the submission made by the learned Counsel for the petitioner. On the perusal of the complaint, it can be seen that in para 1 there is specific averment that the accused No.1 is a partnership firm and that accused Nos. 2 to 4 are its partners. Further, in para 2, it is stated that all the accused Nos. 2 to 4 approached the complainant and requested to give a loan of Rs 1 lakh. It is

further submitted that since the accused persons were known to the complainant, a loan of Rs 1 lakh was given to them. In rest of the paragraphs in the complaint, particulars are given by the complainant as to how the accused assured that the amount will be paid. It is further stated in paragraph 10 that all the cheques were signed by accused No.2. though all of them were/are actively managing and controlling the business of accused No.1. Thus, proper averments have been made by the complainant in the complaint and the allegation is that the petitioner is active partner of the firm. The Apex Court in several judgments has observed that there are no magic words, which have to be averred in the complaint which would bring the accused within the purview of section 141. The Apex Court has observed that as long as averments are there in the complaint which would indicate that the accused would come within the purview of section 141, the High Court should not interfere with the issuance of process while exercising its jurisdiction under section 482 of the Criminal Procedure Code.

4. In the present case, I am of the view that there are sufficient averments in the complaint which would indicate that all the accused were in active control of the day-to-day business of the firm. This is

evident from the averments made in the complaint. It is alleged by the petitioner that she is only a sleeping partner and she does not participate in the day-to-day management of the firm. This is, however, a disputed question of fact which can be determined only after the evidence is led in the Trial Court. The submissions of the learned counsel appearing on behalf of the petitioner, therefore, cannot be accepted.

5. The learned Counsel appearing on behalf of the petitioner has placed reliance on the judgment of the Supreme Court in the case of Monaben (supra) and in the case of **Katta Sujatha vs. Fertilizers & Chemicals Travancore Ltd & Anr.** reported in **2003 Bom.C.R. (Cri.) 9**. So far as the judgment in Monaben's case is concerned, the ratio of that judgment would not be applicable to the facts of the present case. In the said case, the Supreme Court noticed that the only averment regarding partners of the firm was found in the title of the complaint and there were no averments in the body of the complaint regarding the partnership firm. In the light of absence of any averment in the body of the complaint, the Supreme Court was pleased to quash the complaint. In the present case, however, as stated hereinabove, there are number of averments

in the complaint. In the case of Katta Sujatha (supra) also, in the facts of the said case, only accused No.3 was in charge of the firm and it was nowhere stated in the complaint that the petitioner was in charge of the business and he was responsible for conduct of the business of the firm in terms of section 141 of the Act. The Supreme Court observed that the partner of the firm was liable to be convicted for an offence committed by the firm, if he was in charge and responsible for conduct of the business of the firm. The ratio of the said judgment also would not be applicable to the facts of the present case. The complaint, if read as a whole, clearly shows that all the accused were in charge and responsible for conduct of the business. A specific averment to that effect is also made in para 10 of the complaint. In para 1 it is stated that all the accused are partners of the firm. In para 2 it is stated that the accused Nos. 2 to 4 had approached the complainant and had asked for loan. It is further stated that the complainant knew the accused Nos. 2 to 4 and, therefore, she agreed to pay the amount to the accused Nos. 2 to 4. In the remaining paragraphs also, there are averments to show that all the accused had knowledge about the transaction and what transpired thereafter. In para 10 there is specific

averment that all the partners 2 to 4 were actively managing and in control of the business of the firm. The ratio of the said judgment, therefore, would not be applicable to the facts of the present case.

6. The Supreme Court has time and again cautioned the High Court that only in rare cases the inherent power of the High Court be exercised to quash a criminal complaint. Under the circumstances, I am of the view, that no case is made out by the petitioner for recalling the process. All the questions raised by the petitioner can be decided after the evidence is adduced by both the parties in the Trial Court. Both the Writ Petitions are accordingly dismissed.

V.M. KANADE, J.